IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5331 of 2005
with
SPECIAL CIVIL APPLICATION No 5332 to 5335 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GULABSINGH NANDARAM VANJARA

Versus

PARVATIBEN JHAVERBHAI VAGHARI

Appearance:

1. Special Civil Application No. 5331 of 2005
MR GIRISH K PATEL for Petitioner No. 1-5
MR DASHRATH N PATEL for Petitioner No. 1-5
MR MTM HAKIM for Respondent No. 1-2
MR MD PANDYA for Respondent No. 3
NOTICE SERVED BY DS for Respondent No. 4
..... for Respondent No. 5

2. Special Civil Application No. 5332 of 2005
MR GIRISH K PATEL for Petitioner No. 1
MR MTM HAKIM for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/04/2005

ORAL JUDGEMENT

Rule. Shri M.T.M. Hakim learned Advocate waives service of rule on behalf of the respondent Nos.1 and 2. Shri Dipen Desai, learned A.G.P. waives service of rule on behalf of respondent No.5. With the consent of the parties, the matter is taken up for final hearing. As common question of law and facts arise in all the three petitions and therefore, the present group of Special Civil Applications are decided by this common order.

2. In this group of petitions the respective petitioners have challenged the legality and validity of orders passed by the respondent No.4 i.e. Deputy Collector and Sub-Divisional Magistrate, Vadodara dated 20th January, 2005 and rejecting the application of the petitioner for giving the electricity connection to the petitioner as per Section 23 (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It is the case of the petitioner that even the petitioners have filed Rent Suit No.85/99 in the Court of learned Small Causes, Vadodara and the said suit is also pending. It is the case of the petitioners that in the said rent suit the petitioners have also preferred an application for injunction below Exh.5 and the learned Trial Court had granted the order of status-quo on 26/2/1999 which has been continued till date. Shri Girish K. Patel, learned Advocate appearing on behalf of the petitioners has submitted that what is required to be considered by the respondent No.4 i.e. Deputy Collector and Sub-Divisional Magistrate, Vadodara while dealing with the case under Section 23 (a) of the Bomaby Rent Act is whether, the petitioners are in lawful occupation and possession of the property, in question or not and had no jurisdiction to decide the dispute and determining the tenancy rights between the parties. Shri Patel has further submitted that the respondent No.4 while passing the impugned order has rejected the applications on the ground that the petitioners had failed to prove that there is any relation of landlord and tenant between the petitioner and respondent Nos.1 and 2. Shri Patel has relied upon the following decisions of this Court in support of his aforesaid submission and it is requested to allow the present Special Civil Application.

(i) 1984 (2) G.L.R. P.823
(ii) 1990 (1) G.L.R. P.549
(iii) 1996 (1) G.L.R. P.290

(iv) 2003 (4) G.C.D. P.2078
(v) 1999 (9) G.C.D. P.3318

3. In response to the notice issued by this Court, Shri Dipen Desai, learned A.G.P., appearing on behalf of the respondent Nos.3 to 5 has submitted that the petitioners had not even proved their case with regard to whether they are in lawful occupation and possession of the property in question or not. Even, the order passed below Exh.5 in Rent Suit No.85/99 was also not produced before the respondent No.4. It is also further submitted that the decision has been taken by the respondent No.4 on the basis of the material and evidence which was adduced before him and therefore, the impugned orders passed on the basis of the evidence on record are just and proper and therefore requested to dismiss the present S.C.A. Shri Dipen Desai has also submitted that infact the impugned decision is revisable and revision application is maintainable under the Provisions of Bombay Rent Act and therefore, requested to dismiss the present S.C.A. on that ground also.

4. Shri M.T.M. Hakim, learned Advocate appearing on behalf of the respondent Nos.1 and 2 the owners of the property in question had submitted that apart from the fact that as the petitioners are not tenants of the respondent Nos.1 and 2 even the petitioners have also not paid the mesne profits also. It is further submitted that even application below Exh.5 which is filed in Rent Suit No.85/99 is also not finally heard and decided and disposed of even after a period of six years for one reason or the another and that the notice was issued by the Trial Court on 26/2/1999 only for the purpose of settlement. It is submitted that unless and until the petitioners pay up all the arrears / mesne profits at least from the date of filing of the rent suit, the application of the petitioners cannot be considered for supply of electricity connection. At this stage, Shri M.T.M. Hakim, learned Advocate appearing on behalf of the respondent Nos.1 and 2 had fairly suggested that if the petitioners pay the mesne profits at least from the date of filing of the Rent Suit No.85/99 in that case also the respondent Nos.1 and 2 are ready and willing to give N.O.C. for the purpose of electricity connection and for which even the petitioners are not required to approach the respondent No.4 also.

Shri G.K.Patel, learned Advocate appearing on behalf of the petitioners have submitted that the petitioners have no objection in making the payment of mesne profits / rent at least from the date of filing of

the suit and infact, it is his case that the petitioners were always ready and willing to make the payment of rent but the respondent Nos.1 and 2 were not accepting the same and / or were not issuing any receipts. Be that it may considering the aforesaid facts and circumstances of the case, if following directions are issued, it will meet the ends of justice.

1. On making the payment of rent / mesne profits by the petitioners from the date of the filing of the Rent Suit No.85/99 before the Trial Court in the aforesaid Rent Suit No.85/99 with intimation to the respondent Nos.1 and 2, the respondent Nos.1 and 2 are directed to give N.O.C. to the petitioners for the purpose of new electricity connection for the premises in question.

2. On production of N.O.C. from the respondent Nos.1 and 2 it will be open for the petitioners to move before the respondent No.3 for the purpose of new electricity connection and the respondent No.3 is directed to consider the same in accordance with Law and on merits and grant new electricity connection to the petitioners.

3. Learned Small Cause Court, Vadodara is directed to decide and dispose of application filed below Exh.5 in Rent Suit No.85/99, as early as possible preferably within a period of 6 (six) months from the date of receipt of this order, as it is very unfortunate that application below Exh.5 is not heard and decided and disposed of, as the same is pending for more than 5 years.

4. In view of the aforesaid facts and concession given by the parties no orders are passed with regard to the impugned order passed by the respondent No.4 Deputy Collector. However, it is observed that the respondent No.3 is directed to consider the case of the petitioner for electricity connection on submission of the N.O.C. given by the respondent Nos.2 and 3 without anything influenced by the order passed by the

respondent No.4 i.e. Deputy Collector and Sub-Divisional Magistrate, Vadodara dated 20th January, 2005.

5. Rule is made absolute to the aforesaid extent in each of the matters with no order as to costs.

(M.R.SHAH, J.)

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